

**FEBRUARY 14, 2023 SUBMISSION OF
THE COMMISSION ON JUDICIAL DISABILITIES AND TENURE
(PERFORMANCE OVERSIGHT PRE-HEARING QUESTIONS)**

**Fiscal Year 2022 Performance Oversight Questions (Part 2)
*Commission on Judicial Disabilities & Tenure***

- 45. How many times did the agency meet in FY 2022 and FY 2023, to date? What percentage of members were present at each meeting?**
- a. Are there currently any vacancies on the Commission? What is the status of filling those vacancies?**
 - b. Which Commission members, if any, will have their term end during calendar year 2023?**
 - c. Did the Commission ever have to postpone or cancel a meeting due to failing to meet quorum?**

Response:

The Commission met a total of 15 times in FY 2022, including eleven (11) regularly scheduled meetings, two emergency meetings (2), and two (2) executive sessions. To date the Commission has met a total of six (6) in FY 2023, including five (5) regularly scheduled meetings and one (1) executive session. There are no vacancies on the Commission. In FY 2022 and FY 2023, the Commission did not have to postpone or cancel a meeting due to failing to meet a quorum.

46. Please complete the following tables:

Response:

The tables below include the requested information with a few caveats. On review of the CJDT complaints files and related records, the Chairperson and Vice Chairperson have determined that the distinction between complaints “reviewed” versus complaints “investigated” leads to unnecessary confusion and perhaps a misimpression of the Commission’s processes. Therefore, the Commission has simplified the reported information to reflect the Commission’s activities and processes more accurately.¹

The Commission reviews all complaints and, with the assistance of its Special Counsel, conducts a preliminary investigation to determine: (i) first, whether the complaint is within the jurisdiction of the Commission; and (ii) second, whether the complaint raises a question of judicial conduct that should be subject to further preliminary investigation to assess whether formal disciplinary actions are appropriate. The Commission’s jurisdiction is limited to judicial conduct by DC judges in the DC Court of Appeals and the DC Superior Court only. Further, the Commission’s jurisdiction is limited to conduct covered by the DC Code of Judicial Conduct. The Commission has no legal authority to decide matters of law or fact that are exclusively within the jurisdiction of the courts. Therefore, if the complainant

¹ The first and second rows of the chart provided are now included in one row. The basis for reporting the prior reporting as to “investigated” was not documented nor is it able to be replicated based on CJDT leadership and Special Counsel’s review of the files and assessment of the work that was completed.

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disagrees with a judge's legal ruling, the complainant's remedy is to raise the matter with the Court of Appeals; the Commission has no authority to overrule the judge.

- If the Commission has no jurisdiction over the judge or the conduct at issue, the inquiry will end, and the complaint will be dismissed or, in some instances, the complainant may be referred to the correct jurisdiction.
- By contrast, if the Commission has jurisdiction over the judge and the conduct at issue, the Commission will review the alleged conduct to determine whether there is sufficient grounds to conduct additional preliminary investigation, such as review docket sheets, court records, hearing tapes, or to interview potential witnesses. At times, this initial review is conducted by Special Counsel with the assistance of CJDT staff, prior to the initial report to the Commission to expedite the Commission's ability to respond to the complaint or inquiry.
- If the Commission determines further preliminary investigation is warranted, it will direct Special Counsel accordingly and, as needed, provide ongoing direction and oversight depending on the issues involved.

Following the preliminary investigation,² and with the input and recommendation of Special Counsel and CJDT staff, the Commission will determine whether formal disciplinary proceedings or other remedies are appropriate.

These processes are explained on the Commission's website at <https://cjudt.dc.gov/node/603922>, as well as in the Commission's enabling statute and its Rules. See Attachments PRE. 1. and PRE. 4. In the event of questions, CJDT's website also provides contact information for the Commission's offices (phone, mailing address, and email), and includes an "Ask the Director" form which is electronically directed to CJDT's office.

Further, the charts below included requested statistical information regarding complaints that resulted in involuntary retirement proceedings, disciplinary actions, and/or that were disposed of informally (conference or letter to the judge). With regard to those inquiries, the Commission notes that public dispositions of any nature are listed on its website by calendar year. See <https://cjudt.dc.gov/page/Determinations>. To the extent the Commission is able to provide information on a particular matter or groups of matters it has considered or addressed, it has done so.

² As with any investigative process, the extent of review by the Commission or on its behalf is dependent entirely on the nature and seriousness of the complaint, the scope of the issues involved, the information provided by the complainant, and the need for independent investigation and/or validation and corroboration of the same.

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**Commission on Judicial Disabilities & Tenure Activities,
FY 2021 and 2022, to Date**

<i>Case Type</i>	<i>FY 2022</i>	<i>FY 2023, To Date</i>
Judicial Misconduct Complaints Reviewed/ Investigated	70 ³	36
Senior Judge Fitness Reviews Completed	15	0 (6 planned)
Associate Judge Reappointment Evaluations	0	0 (3 pending)

Complaint Disposition Summary, FY 2020, 2021, and 2022, To Date

<i>Complaint Summary</i>	<i>FY 2021⁴</i>	<i>FY 2022⁵</i>	<i>FY 2023, To Date⁶</i>
Complaints Received / Investigation	60	70	37
Dismissed for Lack of Jurisdiction & Lack of Merit ⁷			12
Dismissed for Lack of Jurisdiction	42	See FN5.	17
Dismissed for Lack of Merit	15	See FN5.	1
Dismissed / Referral (wrong jurisdiction) ⁸			2
No Further Action Warranted/Matter Moot	0	See FN5.	1
Length of Time Under Review ⁵			
a. 30 Days	30	55 ⁹ (79%)	12

³ This case statistic was provided by the Executive Director to the Office of the City Administrator for the Commission's Performance Plan Report. While the Commission believes that all FY 2022 complaints and inquiries of concern have been addressed either by decision or action of the Commission, a letter or email response to the inquiry by a citizen, or through a referral if the matter involved a case or judge in a different jurisdiction (state or federal), this number likely underreports actual complaints or inquiries to the Commission. The number of complaints, concerns, or inquiries to the Commission about alleged judicial misconduct is likely closer to 90. The Commission's future complaint tracking system will allow it to track these contacts more definitively with the Commission, as well as actions and resolutions.

⁴ FY 2021 statistics are based on prior reporting by the Executive Director to the J&PS Committee and the Office of the City Administrator. They have not been independently validated.

⁵ FY 2022 statistics are based on prior reporting by the Executive Director to the Office of the City Administrator. They have not been independently validated and, based on materials reviewed in the Commission's office, the total population of complaints or concerns are likely to be higher (between 80-90 complaints). Where the numbers are blank, the CJDT has not yet reported a number and the records are still being reviewed.

⁶ FY 2023 statistics have been validated based on available information and documentation to date.

⁷ This category was not previously tracked or reported but it a common outcome where a complaint raises both legal and non-legal issues.

⁸ This category was not previously tracked or reported.

⁹ The numbers here are based on percentages previously provided by the Executive Director to the Office of the City Administrator. They have not been independently validated. The CJDT notes that

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b. 60 Days	18	15 ¹⁰ (21%)	17
c. 90 Days	7	See FN5.	3
d. 120 Days	2	See FN5.	1
e. > 120 Days	2	See FN5.	
Pending	1	0	4

47. Of the complaints the agency received in FY 2022 and FY 2023, to date, how many came from attorneys? How many came from judges?

Response:

For reasons we explain below and given the highly sensitive nature of these matters, the Commission will not maintain or share statistics on attorneys and judges who bring complaints or concerns, either voluntarily or in accordance with ethical rules, to the Commission.

Confidentiality of Commission’s Review and Investigation of Complaints

In general, and for reasons that are wholly understandable, citizens – including lay persons, attorneys, judicial or court staff, or judges – are reticent: (i) to bring forward allegations of potential misconduct or potential disability concerns regarding a sitting judge; (ii) to cooperate in an investigation or proceeding that involves potential misconduct or potential disability concerns regarding a sitting judge; or (iii) to take sides in a complaint process involving a citizen and a sitting judge.

Nevertheless, to fulfill its mission of maintaining public confidence in the judiciary and to enforce the high standards of judicial conduct, the Commission must encourage and rely upon citizens to step forward with complaints, concerns, or as witnesses. Whether the matter involves conduct in pending litigation, in chambers, the courtroom, the courthouse, or outside in the community, the Commission can only address such matters if it is made aware of and can, through evidence, evaluate them. This can only happen through the cooperation of citizens. Further, and equally important, the cooperation of citizens is essential to the Commission’s ability to evaluate whether a complaint has merit; simply put, whether the evidence provided by the complainant is corroborated or refuted by other evidence.

the increased percentage of complaints resolved within thirty (30) days likely was due to a new procedure the Chairperson and Vice Chairperson implemented in Q1 FY 2022. The procedure, which required the Executive Director to send complaints to Special Counsel within two [2] business days of receipt and a prompt review by Special Counsel, allowed for: (i) early assessment as to whether a complaint should be escalated to Commission leadership; and (ii) time for preliminary investigation before the next Commission meeting so that matters could be resolved promptly. Although the new process was not perfect, it generally resulted in fewer deferrals of complaints. Importantly, the new process also resulted in certain matters being escalated for consideration by Commission leadership when appropriate.

¹⁰ The numbers here are based on percentages previously provided to the Office of the City Administrator. They have not been independently validated.

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In these situations, subject to statutorily authorized disclosures, confidentiality protects those who complain to or cooperate with the Commission against retaliation by the judge and, also importantly, it protects judges from misinformation related to false or spurious allegations by complainants or, in some cases, it protects witnesses who do not support a complainant's or a judge's version of events.

The Commission's Enabling Statute (DC Code § 11-1528 (Privilege; confidentiality))

The Commission's enabling statute recognizes the delicate balancing act that the Commission must strike in these matters, and it affords broad privilege and confidentiality protections over the Commission's consideration of complaints for a reason. For the Commission to achieve cooperation by citizens, and to protect those who participate in the process, Commission investigations of misconduct are privileged and confidential, absent certain defined exceptions.

For the most part, cooperation with the Commission is voluntary.¹¹ However, there are certain instances in which attorneys and judges are ethically bound to inform the Commission of a disability, impairment, or a conduct matter, a circumstance the Commission recently commented publicly on following the investigation and uncontested involuntary retirement of then-Associate Judge Steven N. Berk ("the Judge Berk matter"). See Attachment PRE. 7. (Commission Public Statement (Dec. 20, 2022) (reminding lawyers and judges of ethical obligations under Canon 2, Rules 2.14 and 2.15 of the D.C. Code of Judicial Conduct)), also at <https://cjudt.dc.gov/sites/default/files/dc/sites/cjudt/publication/attachments/berk2.pdf>.

For further context of the Commission's Public Statement, the Commission offers the following, all of which is based on the public record.

The Judge Berk matter was initiated in May 2021 following a series of formal and informal concerns regarding alleged significant delays on the judge's calendar and a potentially serious health condition (collectively "Complaint #1"). Two months later, the investigation was expanded in scope and scope time period (increased by several years) due to a new and unrelated complaint filed by a former law clerk which raised serious allegations of harassment and other mistreatment by the judge.¹² ("Complaint #2).

As is common in complex investigations, the several months-long investigations regarding Complaint #1 and Complaint #2 involved not only the meticulous review of court records, hearing tapes, emails, other documents, and medical records,¹³ it relied upon relevant

¹¹ The Commission can use a compulsory process at a formal hearing stage but such a process is rarely used or required.

¹² The Commission was advised that the former law clerk also had filed a complaint with the DC Superior Court through the Court's new EDR Plan, and that the former law clerk was represented by counsel. During the Commission's investigation, all communications and interactions with the former law clerk were conducted in the presence of and/or through the former law clerk's lawyers.

¹³ The Commission reviewed a wide range of documentary evidence including those provided by citizens and those obtained independently. The Commission's investigation also included independent medical testing and evaluation of evidence provided by medical professionals.

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information provided by citizens who cooperated in the Commission’s investigation, and without whom the Commission could not do its job. While citizens cooperated voluntarily, many understandably expressed their discomfort being involved.¹⁴

Based on the totality of the evidence and on conclusion of its review, the Commission determined the following:

- As to Complaint #1 (complaints of alleged delays and health concerns litigants and attorneys), the Commission found that complaints and concerns brought to its attention had merit. The Commission determined that Judge Berk violated Rule 2.5 of the Code of Judicial Conduct due to the extraordinary nature and extent of the delays on his calendar, as well as its related impact, harm, and cost to litigants. The Commission further found that Judge Berk suffered from a mental or physical disability which was or was likely to become permanent and which prevented, or seriously interfered with, the proper performance of his judicial duties.
- As to Complaint #2 (complaint of alleged misconduct by former law clerk), based on the totality of the evidence,¹⁵ the Commission found that “there was substantial and corroborated evidence that was inconsistent with and contradicted the complaint’s factual accounts and allegations” and “the complaint lacked merit and, therefore, dismissed the complaint”¹⁶
- The Commission initiated the formal notice of Involuntary Retirement proceedings to Judge Berk through his counsel, which Judge Berk ultimately did not contest. Judge Berk was involuntarily retired on November 4, 2022.¹⁷

¹⁴ Of the over twenty (20) interviews conducted and other communications to gather information from various citizens and institutional litigants, the Commission encountered only one witness who declined to submit to an interview or provide any information.

¹⁵ For example, the Commission found numerous instances in which the former law clerk’s account was unsupported and contradicted by other evidence including, among others: (i) the circumstances and reasons for the judge’s early termination of the former law clerk’s clerkship due to the issuance of a court order without the judge’s authorization, (ii) the circumstances of the former law clerk’s recusal from a criminal trial due to the defendant’s objection (conveyed through counsel) to the former law clerk’s presence in light of informal discussions the former law clerk had with the prosecuting Assistant United States Attorney about the former law clerk’s interest in applying to the US Attorney’s Office; (iii) contradictions by witnesses whom the former law clerk asked the Commission to interview; and (iv) contradictions by witnesses who were present contemporaneously with events the former law clerk alleged. Months after the Commission’s dismissal of the matter, the Commission is aware of ongoing public statements by the former law clerk that continue to misstate the evidence in the Judge Berk matter, including information previously provided or known by the former law clerk. To protect those witnesses who provided information to the Commission in this matter, it will not provide further information or details.

¹⁶ See Attachment 7, also at In Re Judge Steven N. Berk, Uncontested Order of Involuntary Retirement (Nov. 4, 2021), at 3 FN3 and https://cjdt.dc.gov/sites/default/files/dc/sites/cjdt/publication/attachments/3839_001.pdf.

¹⁷ The Commission’s action of involuntarily retiring Judge Berk was affirmed by the DC Court of Appeals on the same day. See Attachment II.47.

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The Judge Berk matter was important not only for its outcome but because it highlighted the complexity of the Commission’s work and sensitivities involved in the review and investigation of sitting judges. As was demonstrated in the public filings, the cooperation of citizens (non-lawyers, lawyers, and judges alike), combined with other evidence, was instrumental both in: (i) understanding the extent of the impact on Judge Berk’s ability to manage his calendar and make decisions due to his medical condition; and (ii) providing evidence that ultimately did not support and, in some instances, directly contradicted the serious allegations of misconduct by Judge Berk’s former law clerk whose complaint was dismissed.

Therefore, and to continue to encourage ongoing and future cooperation and participation of the citizens in these matters:

- The Commission issued a Public Statement to, among other things, reconfirm and remind lawyers and judges alike of potential obligations and affirmative duties to report matters pursuant to Rule 2.14 (Disability and Impairment) and Rule 2.15 (Responding to Judicial and Lawyer Misconduct).
- The Commission also re-reviewed and requested minor updates to the DC Court’s Employee Dispute Resolution (“EDR”) Plan on January 14, 2022, which were adopted and published on January 26, 2022.¹⁸ See PRE. 11. and [Employee Dispute Resolution | District of Columbia Courts \(dcccourts.gov\)](https://dcccourts.gov/employee-dispute-resolution/) .

In conclusion, for the reasons stated herein, the Commission will not maintain or share statistics on attorneys or judges who report complaints or concerns. However, the Commission will persist in its efforts to encourage all citizens, including the legal and judicial communities, to continue to bring matters of concern to its attention, either formally or informally.

Exceptions to the Confidentiality

While the Commission will not report on statistics, the Commission can report on one attorney complaint.

As noted above, the statute affords limited exceptions to confidentiality, as defined by DC Code § 11-1528. However, in the Judge Berk matter, the Commission and the judge are aware that the former law clerk in Complaint #2 has made a wide range of public statements on the matter, including with regard to the complaint and the Commission’s review of the matter. With the permission of Judge Berk under § 11-1528(a)(2)(A), the Commission can confirm that at least one lawyer filed a formal complaint that was filed in FY 2021 and was resolved in FY 2022, and after a full and thorough investigation, the complaint was dismissed

¹⁸ As discussed in the Preamble, the Commission has engaged with Court leadership on matters related to potential court and judicial staff concerns over the years, and it has been apprised of the Court’s development and implementation of the court’s EDR Plan in Spring 2021. See Preamble at 6 and FN14.

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without merit. The Commission's disposition letter is attached and redacted to remove the complainant's address. See Attachment II.47-1.

48. In FY 2022 and FY 2023, to date, how many requests has the Commission received under the Judicial Financial Transparency Act? Does the Commission affirmatively review filings required under the Act?

Response:

The Commission was informed that it received and responded to one request under the Act in FY 2022. The Commission's Executive Director reviewed responses received under the Judicial Financial Transparency Act in FY 2022. The Commission is not aware of any requests in FY 2023. The Commission does not collect new filings for FY 2023 until the spring.

49. How many judges are being considered for reappointment?

Response:

The Commission received declarations of candidacy for reappointment in January 2023 by Judge Anthony C. Epstein and Judge Heidi M. Pasichow, whose terms expire on August 24, 2023. The reappointment process is currently in the public comment period, which closes on March 8, 2023. The reappointment recommendations are due to the President of the United States on June 24, 2023.

The Commission expects to begin its review process soon for Judge Alfred Irving, Jr., whose term expires later this year on December 1, 2023.

50. Please provide the Commission's process for soliciting, reviewing, and taking action on a complaint.

Response:

The Commission does not "solicit" complaints. However, the Commission does provide information to the public to create awareness of its mission and accessibility in the event concerns regarding a judge's conduct may arise. In addition to responses already provided, the Commission's website has a page that describes the overall complaint process. <https://cjudt.dc.gov/node/603922>, and includes links for the public to submit a complaint or concern directly to the Commission via the website or to download a form that can be submitted in any other manner such as email, U.S. mail, or in-person. The form includes a series of simple questions that guide the individual through the kind of information the Commission looks for to help identify specific hearing(s) or event(s) that forms the basis for the complaint. While completion of the form is not a requirement, many choose to use the form to provide all or initial information. The complaint process also is described in the Commission's Rules.

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Through its public statements and recent case dispositions, the Commission also has outlined how its processes are applied in practice.

Further, and as part of its Modernization Project, the Commission intends to review and update relevant forms and its website, as needed, to provide further clarity.

51. Please describe any public education or other efforts by the Commission to make residents aware of the Commission and the process to file a complaint?

Response:

The Commissioner leadership, the Executive Director, and Special Counsel have participated in programs arranged by organizations in the legal community from time-to-time, the Commission has not been as active in recent years. In the spring and summer of FY 2022, the Commission discussed as an action item additional public outreach as a specific goal in FY 2023, and it directed the Executive Director to develop a media and public outreach plan. Although it has not yet been formalized due to the Executive Director's transition, this action remains on the Commission's agenda for FY 2023.

In the interim, in summer FY 2022, Commission leadership was informally contacted about an opportunity to participate in a panel discussion on judicial accountability for a panel discussion and program the D.C. Bar was contemplating in summer FY 2022. After agreeing to participate, Commission leadership was informed that the program would not go forward as planned. The Commission thereafter agreed to discuss future programming.

52. Please describe the Commission's participation as member of the Center for Judicial Ethics. What benefits does membership provide to the Commission, and how has participation informed the Commission's work?

Response:

The Commission and its Executive Director have a longstanding relationship with the Center for Judicial Ethics (CJE). Through the CJE, the Commission stays apprised of developments in other state commissions on relevant ethical investigations, resolutions, disciplinary actions, and other developments. The Executive Director provides periodic updates to Commissioners based on reporting from CJE. On occasion, the Commission has directed the Executive Director to contact CJE to evaluate precedent on ethics matters in other jurisdictions. In FY 2022, and through these connections, the Executive Director also had occasion to explore digitized case management systems in other jurisdictions.

53. The Commission's responses to the Committee's FY 2021 performance oversight questions noted that the Commission does not maintain any electronic databases. How does the Commission track reviews, complaints, investigations, and other matters?

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Response:

The Commission office's case management and filing system has been manual, paper-based, and very cumbersome. Given the historically low budget for CJDT, the Executive Director did not see a need to invest in or evolve the system. As the pace of the complaint flow, communications with the public, complexity of investigations, use of technology during COVID-19, and expectations of the CJDT's constituencies increased substantially in recent years, the paper-based system became much harder for staff to manage. The Commission recognized the system was outdated, inefficient, and time-consuming, leading to its decision to modernize the office and its operations and to increase its use of technology. The Commission believes the investments it is making now will vastly improve on its ability to more efficiently, effectively, and accurately track reviews, complaints, investigations, and other matters, as well as to report on metrics and trends.

54. The Commission reported using outside counsel to provide legal and investigative services in FY 2021, and planned to continue that practice in FY 2022. What were the costs for outside counsel in FY 2022? Would the Commission benefit (both in terms of cost and services provided) from a staff attorney to provide these services?

Response:

The FY 2022 costs for outside counsel are included in the attached schedule. See Attachment 54. Total costs for outside counsel were \$196,757.00. During this period, Special Counsel's services were invaluable in:

- Completing a significant investigation in FY 2021 in which a judge was required to take a pause in his judicial duties. The investigation initially focused on calendar delays and medical concerns, but later was expanded due to allegations of serious misconduct by a former law clerk which were then fully investigated and dismissed.
- Preparation for the Commission's unprecedented involuntary retirement proceedings and potential litigation if the judge contested involuntary retirement.
- Navigating the complexities of the Commission's desire to issue a separate public statement related to the investigation that provided additional detail and also reminded attorneys and judges of their obligations to comply with reporting requirements of Rules 2.14 and 2.15 of the D.C. Code of Judicial Conduct
- Incorporating language regarding Commission resources into the DC Superior Court's existing Employee Dispute Resolution plan in FY 2022
- Conducting a highly sensitive investigation of judicial misconduct in FY 2022, in which the judge decided to retire before the Commission could formally act, and then working closely with Commissioners and the OAG's Legal Counsel Division to craft

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a public statement that informed the public without running afoul of statutorily imposed confidentiality restrictions.

- Conducting an initial but extensive review of matters involving a judge with potential medical concerns, during which the judge elected to retire, as well as advising on additional matters that involved medical reviews by the Commission.
- Advising the Commission on matters related to modernization, including data security, data retention, use of technology, development of new procedures that will support investigations, the Commission's consideration of precedent and judicial histories, and the efficient and effective review and resolution of complaints.

The Commission has always engaged an outside legal counsel with highly specialized skill sets, experience, knowledge, and both familiarity with and independence from the D.C. government and the local courts. These attributes are invaluable for the type of investigative work and legal services the Special Counsel is called upon to handle. The Commission and its leadership have evaluated the possibility of a staff legal position over the years. However, on balance, and in years like FY 2022, the Commission is reminded of the importance and uniqueness of the Special Counsel role, including the value it brings to assuring the Commission's independence and objectivity on these sensitive matters. The Commission believes the greatest cost and service efficiencies will come from modernizing its office and operations, and upgrading its staff technology capabilities.

55. Please provide the Committee with an update on the Commission's progress in achieving the five priorities shared with the Committee in the Commission's FY 2021 performance oversight responses. Specifically:

- a. **Review and resolve judicial misconduct complaints in a timely manner;**
- b. **Conduct and complete thorough and comprehensive judicial misconduct investigations as expeditiously as possible;**
- c. **Conduct and complete thorough and comprehensive reappointment evaluations of Associate Judges and conduct thorough and comprehensive Senior Judge performance evaluations;**
- d. **Complete a comprehensive review of the Commission's Rules to clarify the Commission's legal processes and obligations, as appropriate, and to reassess and confirm their relevance to current statutory provisions; and**
- e. **Developing and deploying enhance technology solutions to facilitate and streamline the work of the agency.**

Response:

The Commission has provided information responsive to this question throughout Part I and Part II. The following additional information is provided to further exemplify the Commission's progress in each of the areas above:

- a. **Timely resolution of complaints:** Commission leadership's process requirements on new complaints to assure they are reviewed by Special Counsel early has resulted in the Commission's ability to respond to more complaints within the initial thirty (30)

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days, as well as to escalate serious matters quickly. See above at FN 9. The Commission's response time will only improve with the implementation of its Modernization Project.

- b. **Comprehensive investigations in an expeditious manner:** While complex investigations take time to conduct in a thorough manner, the Commission demonstrated in two FY 2022 public matters that it can and does react quickly to serious matters, including the escalation of serious matters to Commission leadership, convening of emergency full Commission meetings, and focused timely investigations by Special Counsel with ongoing updates for Commission members. See Attachments PRE. 6., and Attachments PRE. 7.-8.
- c. **Thorough and comprehensive reappointment and senior judge fitness evaluations:** As discussed in the Preamble, the Commission has increased documentation around these evaluations. Further, during the transition and at the recommendation of Special Counsel, the Commission is implementing new timelines for increasing the period for public comment in these matters, and assuring more time for Commissioners to complete their investigation and review prior to statutory deadlines and term expirations. In addition and based on observations in the Berk and other investigations, the Commission recently updated its Judicial Medical Forms (JMF) to require treating/certifying physicians to provide baseline information regarding the cognitive ability of judges, including any deficits noted.
- d. **Commission's Rules:** In parallel with the transition, documentation or updating of various procedures, and observations noted in recent investigations, the Commission, Commission leadership, and Special Counsel are noting areas where further clarification or supplementation of the Commission's Rules may be helpful and/or appropriate. The more formal Rules review process is expected to take place later in FY 2023 and beginning of FY 2024.
- e. **Technology:** See Preamble at 7 (Modernization Project) and Part I Question A.2. (discussion of technology project).

56. Please identify whether, and if so, in what way, the agency engaged The Lab @ DC in FY 2021 or FY22, to date.

Response:

The Commission has not engaged with The Lab @DC in FY 2021 or FY 2022.

57. Please describe the Commission's relationship with the Judicial Nominations Commission.

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Response:

The Judicial Nominations Commission is responsible for the selection and nomination of new judge candidates in the DC Courts. The CJDT interacts with the Judicial Nominations Commission in a few ways:

- The Judicial Nominations Commission will notify CJDT of new judges who are nominated by the United States President, confirmed by the United States Senate, and due to be sworn as a judge in the D.C. Courts. This helps CJDT maintain accurate information on term start dates as well as prepare for new judge ethics training.
- Similarly, when CJDT becomes aware of judicial vacancies after a judge announces his or her retirement or in the event of removal or involuntary retirement due to a disciplinary matter, it will notify the Judicial Nominations Commission of the vacancy so that it can begin its own process to find new candidates.

58. Are there any barriers, statutory or otherwise, that unnecessarily slow or hamper the Commission's work?

- a. Does the Commission have sufficient staff support?**
- b. How could the Committee better support the work of the Commission?**

Response:

The Commission's biggest challenge at this time is technology and the paper-based system it is modernizing into a digitized system. The modernization project is funded and is being fully supported by expertise provided by the OAG and OCTO, in collaboration. As is common in any transformative project, unknowns and additional costs arise. However, to date and based on available information, the Commission believes it can manage the most critical aspects of this project in FY 2023. As noted in the Preamble and in response to Question 2 of Section A, the Commission will provide updated information regarding the FY 2024 budget no later than March 10.

* * *

The Commission thanks the Committee for the opportunity to provide answers to the questions above in advance of the Committee hearing.